

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3) CASE NO: 22-60043-cml
4)
4 FREE SPEECH SYSTEMS, LLC,) Houston, Texas
5)
5 Debtor.) Tuesday, September 13, 2022
6)
6) 1:03 p.m. - 1:49 p.m.
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TBATL

9 BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

11 APPEARANCES:

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1 HOUSTON, TEXAS; TUESDAY, SEPTEMBER 13, 2022; 1:03 PM

2 (Call to Order)

3 CLERK: All rise.

4 MAN 1: I was actually -- my door was shut because
5 I was in the restroom when they came by. I saw them walk
6 past --

7 THE COURT: This is Judge Lopez.

8 MAN 1: (indiscernible).

9 THE COURT: Might want to put your phone on mute.

10 WOMAN 1: -- like it scared me because we came
11 around the corner (indiscernible) and like --

12 MAN 1: Yeah, it --

13 WOMAN 1: You had the door shut.

14 THE COURT: Folks, this is Judge Lopez. I can
15 hear everything. Yes. I'll do it.

16 This is Judge Lopez, folks. Good afternoon. It
17 is now 1:03. I'm going to call Free Speech here on
18 September 13th, one o'clock docket. Something just got
19 filed. My understanding is we're going to take up cash
20 collateral and then we will also take up -- talk about
21 emergency motion to compel. So why don't I take
22 appearances. Why don't I start in the courtroom

23 MR. MOSHENBERG: Good afternoon, Your Honor. Avi
24 Moshenberg and Jarrod Martin here on behalf of the Texas
25 plaintiffs, Your Honor.

1 THE COURT: Okay.

2 MR. MOSHENBERG: Jarrod Martin has a hearing at
3 1:30, so he may be stepping out in regard to that matter.
4 And then just so the Court understands, I'm going to be
5 handling the motion to compel issue and Jarrod Martin is
6 spearheading the discussions with the other side about cash
7 collateral, so let him speak to those issues.

8 THE COURT: Why don't we take -- well, we'll see
9 where this goes. Okay, thank you.

10 MR. MOSHENBERG: Thank you, Your Honor.

11 MR. NGUYEN: Good afternoon, Your Honor. Ha
12 Nguyen for the U.S. Trustee. I also have Millie Sall from
13 the U.S. Trustee's office here with me.

14 THE COURT: Good afternoon.

15 MR. LEMMON: Your Honor, Steve Lemmon on behalf of
16 PQPR.

17 THE COURT: Good afternoon.

18 MR. SHANNON: Good afternoon, Your Honor. RJ
19 Shannon on behalf of the Debtor, Free Speech Systems LLC.

20 THE COURT: Okay. Good afternoon.

21 MR. SHANNON: And believe on the telephone or on
22 the -- electronically Ray Battaglia may be on as well.

23 THE COURT: Okay.

24 MR. SHANNON: Thank you.

25 THE COURT: Sounds great. Good afternoon. Ms.

1 Haselden, good afternoon.

2 MS. HASELDEN: Good afternoon, Your Honor.

3 Melissa Haselden and I also have with me Elizabeth Freeman,
4 proposed counsel for Subchapter V Trustee.

5 THE COURT: Okay. Good afternoon. Okay. We have
6 covered the courtroom. Let me just open it up. Does anyone
7 wish to make an appearance who's on video. Mr. Chapple, I
8 see you there. Do you wish to make an appearance?

9 MR. CHAPPLE: Yes, Your Honor. Thank you for
10 recognizing me. Ryan Chapple on behalf of the Connecticut
11 plaintiffs.

12 THE COURT: Okay. Folks the line is completely
13 unmuted. I'm going to try to keep it completely unmuted so
14 I don't have to -- I can focus on the arguments and -- but
15 anyone else wish to make an appearance?

16 MR. BATTAGLIA: Yes, Your Honor. Good afternoon.
17 This is Ray Battaglia. On behalf of Free Speech Systems.

18 THE COURT: Good afternoon, Mr. Battaglia. Anyone
19 else? Okay. Might be easier for me if we talked about cash
20 collateral first and then took up the motions to compel. So
21 why don't we start there. I did see that something got
22 filed. Read it briefly and I'm still reading it. Maybe you
23 can give me the high points.

24 MR. MARTIN: I can give you high points, Your
25 Honor, and Mr. Battaglia can chime in as well. We are able

1 to reach another agreement on interim use of cash
2 collateral. The only material changes are the PQPR payment
3 provisions from before regarding the clawback, those were
4 removed and instead there's a language in there that
5 preserves the clawback rights in the previous interim
6 orders. To date, out of that \$750,000, \$250,000 has been
7 paid. The other \$500,000 has not yet been paid so you have
8 one clock kind of ticking on that.

9 Obviously, that's reserving all rights relating
10 to, you know, broader litigation, but specifically as to
11 those payments as to whether they were proper in this course
12 of business. That's --

13 THE COURT: Okay,

14 MR. MARTIN: -- what the clock is ticking as far
15 as -- and then there's an updated budget as well and Mr.
16 Battaglia can speak to that.

17 THE COURT: I did see that you all need a final
18 cash collateral hearing as well, right?

19 MR. MARTIN: Correct, Your Honor.

20 THE COURT: Or a time, I should say.

21 MR. MARTIN: And we had proposed having that heard
22 at the same time as the tort committee hearing.

23 THE COURT: Okay. Do you think 10 a.m. would work
24 for everyone, if we're going to work through the day on
25 that? I don't think there's a lot of hearings that are

1 going to go on at the same time there. Would 10 a.m. work
2 for October 12th?

3 MR. MARTIN: It's okay for the Texas plaintiffs,
4 Your Honor.

5 THE COURT: Okay. Mr. Battaglia, would that work
6 for you?

7 MR. BATTAGLIA: Yes, Your Honor, and I've had
8 conversations with Mr. Martin -- this is Ray Battaglia, for
9 FSS -- about frankly at the end of the day probably doing
10 another interim at that time.

11 THE COURT: Okay.

12 MR. BATTAGLIA: Just -- I think we're fine running
13 on that basis, but yes. That'd be fine.

14 THE COURT: Okay. Is there anything you wish to
15 tell me about --

16 MR. BATTAGLIA: And I guess one more thing, Your
17 Honor, I should point out is that Ms. Freeman had asked for
18 a couple of -- minor modification to the proposed order
19 regarding payments to insiders and that the words directly
20 or indirectly were inserted, and I don't think that does
21 injustice to anyone who had previously signed off on the
22 proposed order, but I wanted to at least mention it.

23 THE COURT: Okay. I looked at the budget. There
24 were two items that I just want somebody to clarify for me.
25 One of them says Alex Jones trial cost, what is that, for

1 \$80,000?

2 MR. BATTAGLIA: Your Honor, Mr. Jones is -- has
3 required to appear at trial in Connecticut and he's unable
4 to travel, like perhaps your or I can in the sense he does
5 require security when he goes somewhere and he doesn't stay
6 in a hotel.

7 THE COURT: Why is the Debtor paying that?

8 MR. BATTAGLIA: I don't think that we're providing
9 --

10 THE COURT: He's a defendant.

11 MR. BATTAGLIA: Because --

12 THE COURT: Isn't he -- Mr. Battaglia, isn't he a
13 defendant in the same lawsuit?

14 MR. BATTAGLIA: He is a defendant as well as FSS.
15 Yes, Your Honor, and we had provisions in the lift stay
16 order that we could include a budget for his travel
17 expenses. And I think some of his travel expenses really
18 relate to his being there on behalf of FSS.

19 THE COURT: I received this 15 minutes ago. We're
20 not going to do that. You all can come back and ask for it,
21 but we're not paying for travel expenses for co-defendant on
22 15 minutes' notice to the Court about that. Never seen that
23 before. I'm not aware of it. Somebody wants to come back
24 on additional notice, you're more than happy to do so. It's
25 not a no, but it's not a today. I need more information on

1 that. So I'm just telling -- what are the other witness
2 expenses and trial costs? What does that relate to? Does
3 that relate to specifically to FSS or something else?

4 MR. BATTAGLIA: They are employees of FSS that
5 plaintiffs have requested to be present or alternatively
6 FSS' counsel has requested to be present.

7 THE COURT: Okay.

8 MR. BATTAGLIA: At trial.

9 THE COURT: Okay.

10 MR. BATTAGLIA: And also was included in the lift
11 stay order that those expenses would be allowed to be
12 reimbursed.

13 THE COURT: Relates to the FSS' defense. I think
14 lifting the automatic stay makes perfect -- I entered an
15 order lifting the stay. You're going to have to provide
16 some additional information, if somebody -- provide the
17 evidence today, we can take is up. But if you want me to
18 sign an order today providing expenses for co-defendant in
19 litigation, I'm going to need more than just the parties'
20 agreement on that. I think I have an independent duty to
21 take a look at this and I don't understand it.

22 But that's -- that just means somebody can come
23 back and ask for it. It just means that literally this got
24 filed 15 minutes before the hearing and I've reviewed it and
25 you want me to sign it today. That's what I'm wanting to

1 do.

2 Mr. Lemmon, let me ask you. You're the -- far as
3 I know. It sounds like there's agreement between the tort
4 plaintiffs and the Debtors. You're still listed as a
5 secured party.

6 MR. LEMMON: Yes, Your Honor.

7 THE COURT: Your client is still listed as a
8 secured party. I just need to make sure that you're okay
9 with this order. It says an agreed cash collateral order.

10 MR. LEMMON: Yes, Your Honor. I reviewed the form
11 of order and my client has no objection.

12 THE COURT: Okay. Thank you. So I know you got a
13 1:30 and Mr. Battaglia, you can tell me otherwise, but I'm
14 willing to sign the order today extending the use of cash
15 collateral to October the 12th at a hearing on the budget.
16 The rest of the budget looks fine to me. Actually had one
17 more question. And there was an increased cost to the
18 fulfillment expert. What is that? I did -- or who is that?

19 MR. BATTAGLIA: It's Blue Ascension, Your Honor,
20 and this was the subject of the modification to the cash
21 collateral order. It -- really travels based on estimated
22 sales for the period.

23 THE COURT: Okay.

24 MR. BATTAGLIA: And they're not completely
25 connected because of course the sales are presented to you

1 and all these expenses on an approval basis, but they don't
2 track day-to-day the shipping. They happen a week later or
3 several days later, but it's an estimate of what's expected
4 to pay for both the shipping and the fulfillment cost that
5 has been presented or discussed in front of the Court
6 before.

7 THE COURT: And that's different than the
8 fulfillment services line? There's a line --

9 MR. BATTAGLIA: Your Honor, I'm afraid I don't --
10 THE COURT: There's a line item for fulfillment
11 services.

12 MR. BATTAGLIA: I need to --

13 THE COURT: There's a line item for fulfillment
14 services and then I see one for a fulfillment expert. It
15 was there last time. It just went up this time around. I
16 just --

17 MR. BATTAGLIA: I'm sorry --

18 THE COURT: -- need to make sure --

19 MR. BATTAGLIA: I'm sorry, Your Honor. The
20 fulfillment expert is after the hearing in which Blue
21 Ascension became something of an issue. Mr. Schwartz, in
22 trying to fulfill his obligations and resolve the questions
23 that had been presented, has hired someone to come in and
24 evaluate the fulfillment operations of Blue Ascension and to
25 evaluate the cost structure.

1 THE COURT: I remember that.

2 MR. BATTAGLIA: And under --

3 THE COURT: I remember that.

4 MR. BATTAGLIA: So.

5 THE COURT: I remember that. Yeah.

6 MR. BATTAGLIA: That's what that line item is for.

7 THE COURT: Got it. Got it. Got it. Yeah, I
8 remember that and I do remember Mr. Schwartz talking about
9 that at the last interim hearing on August 24. So that
10 makes sense to me. I have no additional questions.

11 Mr. Nguyen, Ms. Haselden, are you all okay with --
12 if I sign this order with the provisions that I've set
13 forth?

14 MR. NGUYEN: Yes, Your Honor. We have no
15 objections to the cash collateral. It was the deal that was
16 struck and we were involved. I've taken a look at it.

17 THE COURT: Okay.

18 MR. NGUYEN: I'm fine with the order. Thank you.

19 THE COURT: Thank you.

20 MS. HASELDEN: Yes, Your Honor. We have no
21 objection with the changes that are --

22 THE COURT: Okay.

23 MS. HASELDEN: -- Ms. Freeman --

24 THE COURT: And again, with the other part, people
25 -- I just, I don't have any evidence as to why that's

1 necessary or how it's -- why FSS should pay for it. I'm
2 happy to hear evidence on it, if there is any. If not,
3 we're all going to --

4 MR. BATTAGLIA: Your Honor --

5 THE COURT: We're all going to come back in a
6 couple weeks. It's just -- I haven't, I'm not comfortable
7 doing it today.

8 MR. BATTAGLIA: Your Honor, this is Ray Battaglia
9 again. I understand. I'll -- if you would like, I'll
10 revise the budget accordingly or with the Court, made their
11 --

12 THE COURT: No.

13 MR. BATTAGLIA: -- certainly says if the budget
14 doesn't, so I'll -- whatever the Court --

15 THE COURT: I can --

16 MR. BATTAGLIA: -- favors and then we'll come back
17 and ask the Court for --

18 THE COURT: Okay. I can --

19 MR. BATTAGLIA: -- those expenses with more
20 explanation.

21 THE COURT: I can figure it out on my end and I
22 think it's just a short line or something, either in the
23 order or just striking it --

24 MR. BATTAGLIA: Yes, sir.

25 THE COURT: -- from the budget, but I can sign it.

1 Mr. Lemmon, if you can just confirm you're okay with me
2 signing the order as provided.

3 MR. LEMMON: Yes, Your Honor. My client has no
4 objection.

5 THE COURT: Okay. Okay. Thank you. And I've
6 heard from the United States Trustee. I've heard from
7 Subchapter V Trustee. I will sign that order. Looks like
8 sales are still doing really well, which is good for FSS.

9 So, okay. I will now turn things over to, guess
10 Mr. Moshenberg, you filed the motion. Turn it over to you,
11 sir.

12 MR. MOSHENBERG: Thank you, Your Honor.

13 THE COURT: You can move that mic closer to you.

14 MR. MOSHENBERG: Sure.

15 THE COURT: No problem.

16 MR. MOSHENBERG: Can you hear me all right, Your
17 Honor?

18 THE COURT: Just fine. Thank you.

19 MR. MOSHENBERG: Thank you very much and thank you
20 for hearing this issue so quickly, Your Honor. So as the
21 Court is well aware, this cash collateral issue is something
22 the parties are continuing to debate and do discovery on and
23 we're preparing for that cash collateral hearing, looks like
24 on October 12th.

25 One of the issues in that cash collateral motion

1 has to do with the nature of the PQPR debt, as the Court
2 knows. It's not only the nature of the debt but also how
3 that debt was arrived at and the actual amount of the debt
4 itself. As the Court knows, we've worked together with Free
5 Speech Systems in terms of reaching interim cash collateral
6 orders, same thing with PQPR, and that's something we've
7 been very proud of, the fact that we've been able to work
8 with them when needed.

9 And one of the agreements that the parties reached
10 and the Court entered an order on was Document 98 which is
11 the second cash collateral order. And Paragraph No. 14,
12 Your Honor, really codifies the agreement that the Court
13 blessed that the parties to do discovery as it relates to
14 the cash collateral order and what it says is it provides
15 that PQPR as well as FSS, but really we're focused on PQPR
16 today, PQPR was supposed to provide documents in response to
17 document -- to discovery requests and provide other
18 discovery responses by certain date. Then after that date,
19 the parties were going to have a deposition of PQPR's
20 corporate representative.

21 Paragraph 14 of Document 98 also says that if
22 there's some sort of dispute relating to the discovery, then
23 that the parties can move on an emergency basis. Now, that
24 being agreed to, the parties did issue discovery requests
25 and the Texas plaintiffs served discovery requests that were

1 focused on this targeted issue about the nature of the PQPR
2 debt and the amount of the PQPR debt.

3 And just so the Court understands, Exhibits 1, 2,
4 and 3 to the motion to compel, I've conferred with opposing
5 counsel and their finding that admitted. That way Jarrod
6 can leave a little sooner without having to get those
7 documents in.

8 THE COURT: Let's make him stay. Just fine.

9 Thank you.

10 MR. MOSHENBERG: But Documents 1, 2, and 3 in
11 support of that motion or exhibits, rather, it's the
12 discovery request, the responses, and then the attempt to
13 meet and confer. Now, the cash collateral motion, you know,
14 of course the underlying notes, the cash collateral here
15 that PQPR has with Free Speech Systems, it's not an ordinary
16 note that you would find, for instance, when a bank is
17 giving out a secured loan for a promissory note.

18 What you have here is you've got promissory notes
19 that are basically memorializing 50-some million dollars,
20 \$53 million in past obligations owed. So it's not future
21 money being paid out under a security arrangement. It's
22 supposedly some legal obligation to pay a debt that was
23 incurred in the past.

24 And so a lot of our discovery requests were
25 focused on figuring out what's the nature of that underlying

1 debt that preceded the promissory notes. And that's why we
2 just served those discovery responses that are in Exhibit 1
3 and the responses that are in Exhibit 2. The problem is --
4 and this is in Exhibit 2 -- is that the responses PQPR
5 provided list a bunch of boilerplate objections and then it
6 just states what documents PQPR has decided to produce.

7 What we have a problem with their responses is
8 first of all, there's really two issues. The first one is,
9 we don't really know whether responsive documents are being
10 withheld on the basis of an objection. They just provide
11 these boilerplate objections saying we object to this
12 request, here's what we'll produce. It's unclear from the
13 responses, are there other responsive documents out there
14 that are responsive to that request that are being withheld.

15 THE COURT: Have the parties conferred?

16 MR. MOSHENBERG: We have tried to. We did speak
17 this morning, Your Honor. So we tried to confer for several
18 days, as Exhibit 3 shows to our motion. We didn't hear
19 anything for a long time, Your Honor. Finally, yesterday,
20 after they filed their response, there was a brief
21 communication where they sort of invited us to send another
22 email and explain what we want, and we did that.

23 We sent a long email detailing the documents we
24 want and why we want them, and they responded and they
25 basically said the effect of well, you don't need to have

1 these documents. First, take the deposition and then see if
2 you need the documents. Obviously, that's not what the
3 discovery rules contemplate. If there's responsive
4 documents out there and they're discoverable, then we have a
5 right to receive them.

6 Of course, in practice, you need the documents in
7 order to take a meaningful deposition. So legally, I don't
8 really understand why that's a reason to not turn over a
9 responsive document. Doesn't make any sense in normal
10 practice of law, but especially doesn't make sense given
11 that the parties already agreed that they were going to turn
12 over responsive documents before the deposition, and that's
13 what Document 98, Paragraph 14 shows. So I don't really
14 understand the basis for that.

15 The other issue that they mention is they sort of
16 indicate there might be some responsive documents. There
17 may not be other ones. They don't exist. If -- and this
18 really is a big part of the issue. We don't want responsive
19 documents being held on the basis of an objection. If there
20 are no responsive documents, they're required under Rule 34
21 to say so. We just want to know that there's no documents
22 out there that are being withheld. And it seems like for
23 some of these discovery requests, that may be the case.

24 What they need to do is withdraw their improper
25 objections and just say, there's no responsive documents in

1 --

2 THE COURT: Do you think some of these requests
3 are overly broad?

4 MR. MOSHENBERG: I don't, Your Honor. I'm happy
5 to handle any specific --

6 THE COURT: Let's start.

7 MR. MOSHENBERG: Sure.

8 THE COURT: We're talking about cash collateral.

9 MR. MOSHENBERG: Yes, Your Honor.

10 THE COURT: Produce all agreements, contracts, and
11 -- all agreements between FSS and PQPR. What purpose does
12 that serve with cash collateral --

13 MR. MOSHENBERG: It's --

14 THE COURT: -- unrelated to the debt?

15 MR. MOSHENBERG: Well -- and so when we --

16 THE COURT: I'll give you a few. Produce all
17 documents evidencing any agreements between FSS and PQPR.
18 Right? Regardless if it relates to the debt. Say there's
19 an agreement -- what do you mean by agreements, right?

20 That's different from contracts and promissory notes. All
21 of them. Produce -- let's see. Produce all employee lists
22 for PQPR from September 1st, 2013 to the present. Why do
23 you need to know who works at PQPR in 2013 to determine
24 whether the debt is owed at that amount or not? I'm just
25 asking. It's the kind of -- all documents and

1 communications evidencing, so every communication evidencing
2 the ownership of PQPR from its inception. You don't find
3 that to be a little overly broad?

4 MR. MOSHENBERG: No, I --

5 THE COURT: Documents just saying, we formed PQPR
6 in 2013, so I'm going to have to go back in 30 days' notice
7 and file -- and find every email that shows every time that
8 they say that they're the owner from 2013 in connection with
9 a cash collateral hearing that was schedule to occur today?

10 MR. MOSHENBERG: Well, not necessarily, Your
11 Honor. But to be clear, we detailed in an email yesterday,
12 we talked to them about what we were specifically looking --

13 THE COURT: -- not what you said. You said you
14 didn't think some of these were overly broad.

15 MR. MOSHENBERG: Sure. And let me be clear, and
16 we can always -- of course, the rules allow us to narrow it
17 to the extent it is discoverable and I want to be --

18 THE COURT: Taking you up on your first statement.

19 MR. MOSHENBERG: Sure, Your Honor. I don't think
20 the way that you read the question, Your Honor, the request
21 --

22 THE COURT: I read it the way you wrote it.

23 MR. MOSHENBERG: Sure. And I want to be clear. I
24 didn't perceive it that way. When we as a group circulated
25 these drafts, what we're referring to, the draft contracts,

1 agreements, however they want to call it, between Free
2 Speech Systems and PQPR.

3 THE COURT: -- I'm going.

4 MR. MOSHENBERG: Sure.

5 THE COURT: I think some of these are really
6 broad, but it could be narrowed to address what you need and
7 then I think Mr. Lemmon is going to have to tell me if these
8 -- some of these requests were narrowly tailored towards
9 cash collateral and the debt that exists, I understand your
10 initial -- his initial response, but maybe he was jammed for
11 time. But now we're a couple of weeks out now and we're
12 going to go further, even further out. I don't understand.
13 I think some of these requests can be narrowly tailored in a
14 way to specifically address the issue and I would need to
15 understand from PQPR whether they would still have an
16 objection to that.

17 But I -- you're asking me whether I think an
18 organizational chart is appropriate. I do. If you're
19 asking me whether they need to identify all facilities and
20 offices used by them, I don't know. You'll have to tell me
21 whether that's appropriate or not, but I do think that the
22 parties could talk and narrowly tailor this in a way that
23 really gets to the heart. I do understand the issue.

24 There were -- there was a large amount of debt
25 that was -- this is different. This is not just a loan

1 agreement where money was advanced, a loan agreement was
2 signed and then funds were advanced on a loan and there was
3 security taken on that. This seems to be a little different
4 and you're -- I think you're entitled to get documents that
5 are based on that.

6 MR. MOSHENBERG: Sure.

7 THE COURT: I just want -- I just think things can
8 be narrowly tailored in a way that really addresses what
9 you're doing that relates to cash collateral, and I'm happy
10 to do that, but I think the parties could really sit down
11 and see if that could get done, with my guidance.

12 I think there's a difference between seeking
13 documents for other purposes, and I'm not saying that's what
14 you did. I just -- if we're going to limit it to cash
15 collateral, which is what's going on, then I think you can
16 get the docs and I think there are. And I agree with you,
17 if all you are receiving is the underlying loan documents
18 and some worksheets, I think Mr. Lemmon is going to have to
19 tell me if there's more or admit that there's more or not.

20 But I think some of these can be more narrowly
21 tailored to address the debt, but that's a simple thing.

22 MR. MOSHENBERG: I totally agree, Your Honor, and
23 candidly, my normal practice, I usually am able to meet and
24 confer and reach some sort of deal. The reason the motion
25 was filed is because we just heard nothing for about a week

1 and we tried our best and, you know, it turns out Mr. Lemmon
2 was busy meeting with Ms. Haselden and trying to promote his
3 motion to investigate instead of doing the discovery he
4 promised to do under our agreement.

5 THE COURT: That's right. The motion to
6 investigate is still out there as well.

7 MR. MOSHENBERG: Yes, Your Honor. And we totally
8 agree. You know, if there's room to narrow it, absolutely.
9 We're not looking for every document under the sun, so I
10 agree with you and I think we'll be able to work it out.
11 But I do want to be clear and I would love some guidance
12 from the Court. I mean, our wish list is essentially to
13 make sure that if there are no responsive documents that
14 they withdraw their objections and say there's no responsive
15 documents, assuming that it's been tailored as the Court has
16 discussed.

17 And then if there are responsive documents that
18 are tailored as was discussed, that absolutely produce them.
19 And I'm happy to work with Mr. Lemmon on that. I think we
20 could probably do that, and if not, we can come back to the
21 Court soon if that works.

22 THE COURT: Okay. That's perfect. Thank you.
23 Let me hear from Mr. Lemmon.

24 MR. LEMMON: Judge, I'm chagrined to be here on a
25 discovery motion. I don't think I've appeared on a

1 contested discovery motion in federal court in 20 years, but
2 part of this is on me, and that is that Mr. Martin reached
3 out to me on Labor Day by email and I read his briefly. It
4 was to me and to Mr. Battaglia and I believe --

5 AUTOMATED VOICE: Conference muted.

6 MR. LEMMON: -- the first part of it dealt with a
7 privilege log, right, which I didn't really find applicable
8 and I did not give his email, when I read it on my iPhone
9 when I got off the golf course, the -- in the way that I
10 should have.

11 The follow-up email again came to me and I read it
12 on my iPhone the day before the creditors meeting and it was
13 Mr. Martin's suggestion we visit after the creditors
14 meeting. I completely zoned on those. Just didn't see
15 them. So I was surprised when I got the emergency motion.
16 I called Mr. Martin because the Court will recall I'm the
17 person that offered discovery informally at the time of the
18 August -- I think it was -- 3rd hearing. And -- because I
19 was going on vacation.

20 I wanted everybody to be able to get what we had
21 and we have somebody who did the forensic accounting
22 relating to the underlying debt and was instrumental in the
23 -- knows about the execution of the notes and that's the
24 person I've offered and whose work papers I've sent. And
25 we've offered him repeatedly for deposition. That

1 deposition is currently set for October 4th and I suppose
2 that the plaintiffs will go forward taking it this time.

3 I had talked originally with Mr. Martin and I
4 thought we had an agreement that I was going to produce the
5 documents related to the existence of the debt which I
6 viewed as the key issue related to cash collateral. And we
7 will. We will absolutely produce everything related to the
8 existence of the debt or reasonably related to the existence
9 of the debt, Your Honor, and I don't have a problem with
10 that.

11 THE COURT: You think that includes negotiations
12 surrounding the formulation of the debt?

13 MR. LEMMON: I believe that there are no documents
14 regarding the negotiations regarding the formation of the
15 debt. The way the debt occurred, Your Honor, was that PQPR
16 sold to FSS on open account and they kept a ledger, right.
17 And so those accounting issue -- entries are all, of course,
18 relevant, right. My problem is that -- and when we got the
19 document requests while I was on vacation, it demanded a
20 response in eight days at that time.

21 We weren't able to do that. My problem is that
22 that ledger has a lot of other things in it, right, such as
23 every purchase my client's ever made. Right, it's my
24 client's general ledger and we don't find that to be germane
25 to any of the discussions. So what we have is we have a

1 compilation done by the forensic accountant of all of those
2 and we can work with everybody to get them what they need
3 regarding the existence of the debt. I don't have a problem
4 with that, Your Honor.

5 Just want to say one other thing, and that is
6 yesterday I called Mr. Martin and I said, what is it that
7 you guys really want. And he said well, we need your
8 spreadsheets in native format and I agreed immediately. I
9 said, they won't be Bates labeled that way, but we'll give
10 them to you. And he said Mr. Moshenberg may want something
11 different. I got an extensive email from him last night. I
12 responded. I called him. Finally reached him this morning.

13 I said, what is it that you really want on an
14 emergency basis. He said, I need you to withdraw every
15 single one of your objections and produce every single
16 document. Judge, we will absolutely work with him.

17 Let me just mention one other thing, Your Honor,
18 that's a concern to us and that is we have asked for a
19 protective order in this case and we've circulated. We
20 think we have agreement on the protective order, but there
21 are parties that are downloading our documents that we sent
22 to them and I don't know who those parties are exactly.

23 And so I've asked for them to tell us who has
24 signed off on the protective order but this illustrates one
25 of the problems in this case and that is, you know, this is

1 my client's proprietary information and we do not want it
2 traveling around the world. So -- and so the protective
3 order that everybody has agreed to is just the standard
4 Southern District protective order with no changes
5 whatsoever. But for that reason, we have concerns about
6 production in this case and we do need the signed signature
7 pages on the protective order before people are downloading
8 our documents.

9 So with all that said, Your Honor, we absolutely
10 will produce all of the documents relating to the debt. You
11 know, we just need this tailored a little bit and we'll get
12 them all of that.

13 THE COURT: Let me -- what I'm thinking about
14 doing, a couple of things and Mr. Lemmon, (indiscernible)
15 stand here, I want you to -- give the opportunity to react
16 to what I'm saying. I'm going to deny your request for
17 emergency consideration to appoint the Subchapter V Trustee.
18 I'm going to -- expand the powers of the Subchapter V
19 Trustee. I want to take everything up at one time. I want
20 to take everything up on the 12th. I want to think about
21 everything and I'm going to make a decision about
22 everybody's requests at that time.

23 That doesn't mean that the Subchapter V Trustee
24 can't, if she's doing whatever work she has, I'm not here to
25 impede whatever she's doing. I'm just saying I want to take

1 up the consideration and sign whatever I'm going to sign
2 because what I don't want to do is, quite frankly, limit her
3 or limit myself in any way. I want to have the full range
4 of options to -- based on evidence that I hear as to what I
5 think the Subchapter V may or may not be doing. May want to
6 do more. May want to do a little bit less. Just -- I just
7 need to hear what the evidence is and I want to take it up
8 all at the same time.

9 I'm also going to say I don't think I need to rule
10 on anything today, but everybody reserves the right to come
11 back and tell me. I am asking all of the professionals in
12 this case -- I understand the history here. Understand that
13 there's a lot of tension between clients but I expect the
14 professionals to work together and to do it, so I think I'm
15 really reaching out to both sides, asking everyone to really
16 consider the rhetoric in the papers and the -- what gets
17 presented at the hearing.

18 I just am asking all the professionals to really
19 talk about what they want in connection with this hearing
20 and what you need in connection with cash collateral. And
21 if the parties can't work it out, then come back to me but -
22 - I'll leave it there.

23 I think there's a way for you -- comes to
24 questions about protective orders, I think that's standard.
25 I think professionals should be able to work through that

1 really easy. So I hope no one is downloading information
2 and taking advantage of information without protection, if
3 that's what folks are looking for. At the same, Mr. Lemmon,
4 when it comes to PQPR, if there are additional documents
5 that are responsive, at some point someone's going to have
6 to say I do agree with Mr. Moshenberg; here's all I've got
7 and I've got nothing else, and I think that representation
8 is standard.

9 I don't think you need to remove your objection,
10 quite frankly, but I do think at some point people need to
11 know, you know, this is all you've got so that when they
12 show up to a hearing, they know that they've received all
13 responsive documents -- responsive nonprivileged documents.
14 So -- and I know the professionals here. I'm talking very
15 basic standard things here, so I'll leave it there.

16 MR. LEMMON: And Judge, just so I'm clear, and we
17 will produce everything related to the debt. We would
18 produce an org chart. I'm told there is not one. But we
19 don't have a problem at all with that and we'll take all
20 these things up on the 12th, I suppose.

21 THE COURT: That's when I want to take it up. If
22 parties have different views on all this, they can certainly
23 take it up, but I don't want to take it up. I don't know
24 what I'm going to hear on the 12th.

25 MR. LEMMON: Sure.

1 THE COURT: And regardless of how I rule on the
2 12th, I think the Subchapter V Trustee has to do her job and
3 do her job the way she sees fit, so that's not for me to --

4 MR. LEMMON: May --

5 THE COURT: -- up now.

6 MR. LEMMON: May I say one thing, Your Honor?

7 THE COURT: Sure.

8 MR. LEMMON: And -- the meeting we had yesterday
9 with the Subchapter V Trustee and counsel was characterized
10 as some sort of sales job. Would that I was such a great
11 advocate that I could put a sales job over on Ms. Freeman or
12 --

13 THE COURT: I don't want to get into it.

14 MR. LEMMON: -- you know, Ms. Haselden and it's --
15 it was informational. We're happy to cooperate to the
16 fullest extent with the Sub V Trustee, so.

17 MR. MOSHENBERG: (indiscernible).

18 THE COURT: Yeah, absolutely.

19 MR. MOSHENBERG: I am confident we're going to be
20 able to work together and figure out the scope of what is
21 discoverable, but I do want to make sure we're on the same
22 page about timing, Your Honor. We have a deposition on the
23 4th. His position has been that you can get the documents
24 after the deposition. We think we're entitled to them
25 beforehand. That was what was agreed to.

1 THE COURT: I feel really confident that that's
2 probably not going to be the case after today.

3 MR. MOSHENBERG: That -- I'm sorry.

4 THE COURT: That you will receive the documents in
5 time to take a deposition.

6 MR. MOSHENBERG: That we will?

7 THE COURT: Yeah.

8 MR. MOSHENBERG: Okay.

9 THE COURT: I feel pretty confident about that,
10 without me having to get involved.

11 MR. MOSHENBERG: I appreciate that, Your Honor,
12 and --

13 THE COURT: I feel really confident that you're
14 not going to get them, like, October 1st, either. You know,
15 that you'll get them in due course as quickly as possible on
16 a rolling basis.

17 MR. MOSHENBERG: I appreciate that.

18 THE COURT: That sounds right to me.

19 MR. MOSHENBERG: I appreciate that, Your Honor.

20 THE COURT: And look, I'm here on 24 hours'
21 notice, so if you get nervous, if things are getting tight
22 and you don't think things are going the way they are, I can
23 -- you know, it's just an email to my case manager, right,
24 and we can get on the phone in less than 24 hours we can
25 have a hearing, or the same day. So this isn't saying I'm

1 continuing everything, right, and maybe the issue become
2 moot. Maybe it doesn't. But I'm here and I'm just hoping
3 that the professionals can -- I'm asking the professionals
4 to get in a room and have a serious meeting about what's
5 needed. I think you're probably entitled to a lot of what
6 you've asked for but maybe it just needs to be narrowed in a
7 way that would make sense in light of the timing in terms of
8 where we are, and I think that can be accomplished in fairly
9 short order. The documents either exist or they don't. Mr.
10 Lemmon either can produce them or not and we'll see where it
11 goes.

12 MR. MOSHENBERG: That's fair, Your Honor.

13 THE COURT: And everybody's rights are reserved.
14 Everybody's rights are reserved, U.S. Trustee's rights, any
15 other creditors' rights, Subchapter V Trustee's rights,
16 Debtor's rights, everybody's rights are reserved on these
17 issues. I think we've just got to get to the 12th and then
18 see where things go, right, and if this gets -- we'll see
19 where things are at that time. But I'm really, really
20 asking the professionals to hear what I'm saying and I don't
21 think anyone has to agree on anything.

22 I do think it makes sense to be civil and work
23 through these issues as the professionals, take care and do
24 it.

25 Is there anything -- I'm going to sign that order,

1 cash collateral extension order today. Let me ask the U.S.
2 Trustee, since I've got you here. Is there anything -- I
3 saw that you filed objections to certain retention
4 applications. Two of those individuals aren't here, so I
5 don't want to pick a date to take that up. I don't want to
6 take it up on the 12th. That seems like a lot --

7 MR. NGUYEN: Understood, Your Honor. Mr. Shannon
8 --

9 THE COURT: -- in one day. Mr. Shannon, I just --
10 but maybe you all can get together and we can pick a date
11 and just reach out to my case manager at that time. I don't
12 need to comment. I haven't read them -- haven't read
13 anything.

14 MR. NGUYEN: Sure --

15 THE COURT: I just say that it got filed, but
16 maybe we can pick a date. There's a lot, I think, scheduled
17 for the 12th and I think there's -- has to be a day where we
18 can do retentions on a separate track.

19 MR. SHANNON: Yeah. Your Honor, one thing that --
20 there is a status hearing set in this case for September
21 20th.

22 THE COURT: Yes, that's --

23 MR. SHANNON: And I think that's probably about
24 the -- you know, it's quick, but still has some time for
25 gathering the required information. So Your Honor, we would

1 request setting those applications to employ the CRO and
2 Shannon and Lee LLP on that date, if possible.

3 THE COURT: You want to take it up at that hearing
4 on the 20th?

5 MR. SHANNON: Yes, on September 20th.

6 MR. NGUYEN: Your Honor, I have no problem with
7 that. I understand Mr. Shannon doesn't want to put his
8 employment at risk. He doesn't want to work longer than,
9 you know, Your Honor's --

10 THE COURT: No, no, no.

11 MR. NGUYEN: I'm certainly -- you know, we'll work
12 with the schedule. I told Mr. Shannon this morning,
13 whenever he wants to do it, we'll be ready. We'll raise our
14 objections and go forward with it.

15 THE COURT: Let me just take a look at something.

16 Scheduled at one o'clock for the 20th? Is that right?

17 MR. SHANNON: I believe so, Your Honor.

18 THE COURT: Okay. Okay. Yeah, let's take it up
19 at one. Okay. That works for me, September 20th at 1 p.m.

20 MR. NGUYEN: And just for clarity, Your Honor, Mr.
21 Shannon and I spoke this morning. He requested a little bit
22 more clarity on my objection. I use an entity instead of an
23 individual. I normally do that to tone down the rhetoric,
24 but Mr. Shannon asked me to be more clear in terms of when I
25 make the --

1 THE COURT: I understand.

2 MR. NGUYEN: I'm going to file a corrected motion.
3 If he wants me to be clear, I'm happy to do it and I'm not -
4 - I just want to make sure the record's clear. That
5 corrected motion is going to be filed sometime this
6 afternoon or by the end of the day.

7 And then the second thing is, we talked about some
8 limited discovery. It's very limited in terms of the scope
9 of the employment -- the scope of the engagement that
10 occurred between May 24th through May 31st, and Mr. Lee in
11 his declaration, there was about \$21,000 of services. I
12 asked Mr. Shannon to explain what those services are and we
13 just need some records of that to go forward with twenty --
14 other than that, I don't intend at the hearing on the 20th
15 it's going to go long.

16 THE COURT: Okay. No, no. I'll give it as much
17 time as we need. It's important, but I appreciate it so
18 that -- really appreciate you thinking about that. So can
19 we -- do you think, Mr. Schwartz, we can take that up on the
20 20th as well?

21 MR. SHANNON: I believe Mr. Schwartz will be here
22 anyway.

23 THE COURT: For the status report?

24 MR. SHANNON: For the status report.

25 THE COURT: Okay.

1 MR. SHANNON: And again, Your Honor, I do believe
2 that the U.S. Trustee's primary objection is about the
3 disclosures in the InfoW case. That's really the crux of
4 the objection and what will need to be investigated, so it's
5 not -- I don't think it goes beyond that.

6 MR. NGUYEN: That's correct. There was a prior
7 nondisclosure that occurred before you. There's going to be
8 some legal arguments on how you should address that, but
9 that's where we are with the objection.

10 THE COURT: I can -- we'll take it up on the 20th
11 and if Mr. Schwartz, you can just -- I will assume Mr.
12 Schwartz will be here, but if anything changes just reach
13 out to Ms. Saldana and let her know, but I will -- we will
14 set Schwartz' application as CRO and Shannon and Lee and
15 take it up at -- on the 20th.

16 Ms. Haselden, anything we need to talk about?
17 Anything from your perspective before the 20th?

18 MS. HASELDEN: (indiscernible).

19 THE COURT: All right. I do note -- and this is a
20 hyper technical point and I want to -- well, you're telling
21 me. If there's anything you want to talk about, I'll take a
22 look at something.

23 MS. HASELDEN: Your Honor knows this case is very
24 unusual and because of the motions that have been filed by
25 both the parties in the case, the Debtor and the plaintiffs,

1 seeking to expand my role, I mean, I've found it necessary
2 first to go ahead and engage counsel. And then, you know,
3 Mr. Lemmon had requested that we meet with his client and
4 because of the nature and the posture of the case, we went
5 ahead and set the meeting. I think, you know, at some point
6 we will need a little clarification on exactly what I need
7 to do.

8 Normally, some of this investigatory work, you
9 know, is not necessary, so I guess between now and the 12th,
10 I'll try to figure out --

11 THE COURT: Yeah, look, I mean, I'm interested to
12 know your thoughts as well on -- you know. That's why I
13 don't want to -- I don't want to take anything up on a rush.
14 I don't know what the evidence is. I don't know what the
15 evidence is going to show. May show something, may show
16 nothing.

17 I think I'd want to know if, you know, as I
18 consider expanding the role of the Subchapter V Trustee,
19 what you would see that role to be and what you think it
20 should be as well, if anything. I don't want to put any
21 words or thoughts in your -- in you. I just want to know
22 that I -- you're an important part of the Subchapter V
23 process and I want to know what you think. Okay?

24 MS. HASELDEN: Thank you, Your Honor. Yes. We're
25 learning and the parties are all at this point cooperating

1 and providing information.

2 THE COURT: So Mr. Shannon, the only hyper
3 technical point is 1188(c) requires the report get filed on
4 the docket before the meeting, 14 days before.

5 MR. SHANNON: Yes, Your Honor. I believe you --

6 THE COURT: The hearing.

7 MR. SHANNON: I believe you filed an order that
8 set the date that the --

9 THE COURT: I did.

10 MR. SHANNON: -- status report needs to be filed.

11 THE COURT: I did.

12 MR. SHANNON: And I believe it's today, is what
13 that order says.

14 THE COURT: No. That's what I was trying to --

15 MR. SHANNON: I'm sorry. I don't remember the
16 docket number, unfortunately.

17 THE COURT: Yeah.

18 MR. SHANNON: Around 50 or so.

19 THE COURT: That makes two of us. Let's see. If
20 today's the day, I just want to make sure something gets
21 filed so we comply with the code. That's where I was going.
22 It wasn't to -- anything other than that. I just want to
23 make sure that we're complying with -- that a status report
24 gets filed so that we're compliant with the Bankruptcy Code.

25 MR. SHANNON: Yes, Your Honor. And I just went,

1 what your order said rather than --

2 THE COURT: No, no, no, you should. You should.

3 MR. SHANNON: Okay.

4 THE COURT: No, no, no. You absolutely should.

5 No, I -- we set them for a reason on that date and I
6 remember and I just want to make sure that we're all on the
7 same page. Yeah, it's Docket 65, so --

8 MR. SHANNON: Yes, Your Honor. I believe
9 originally the status report, the idea was to actually have
10 it a week after that. Mr. Schwartz will be out of the
11 country during that week, so I believe that the date for the
12 status conference got pushed back a week and the report did
13 move as well.

14 THE COURT: No, no, no. I think we're all on the
15 same page. Think we're all on the same -- yeah. Today's
16 your day.

17 MR. SHANNON: All right. Thank you, Your Honor.

18 THE COURT: Sounds like you're having some fun
19 this afternoon. All right, folks. Anything else we need to
20 talk about? All right. Thank you, everyone.

21 CLERK: All rise.

22

23 (Proceedings adjourned at 1:49 p.m.)

24

25

1

CERTIFICATION

2

3 I certify that the foregoing is a correct transcript from
4 the electronic sound recording of the proceedings in the
5 above-entitled matter.

6

7 *Sonya M. Ledanski Hyde*

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10 Sonya Ledanski Hyde

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25 Date: September 20, 2022